



August 3, 1999

Ms. Lilia Ledesma-Gonzalez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR99-2180

Dear Ms. Ledesma-Gonzalez:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126383.

The McAllen Police Department (the "department") received a request for offense report number 99-013633. You contend that the requested information is excepted from public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. The Seventy-fourth Legislature repealed section 51.14 of the Family Code and replaced it with section 58.007 of the Family Code. We note that the Seventy-fifth Legislature amended section 58.007 of the Family Code. In this case, neither section 51.14(d) nor section 58.007 is applicable because the juvenile involved is not a "child" as defined by defined by section 51.02 of the Family Code. A "child" is a person who is

(A) ten years of age or older and under 17 years of age; or

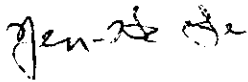
(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(1). Here, the juvenile at issue was nine years of age when the conduct occurred. Therefore, the department may not withhold these documents from the requestor based on section 51.14(d) of the Family Code.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the requested information relates to a case investigation that is ongoing. However, the documents show that the case has concluded and is closed. Because you have provided this office with contradictory information, we conclude that you have not sufficiently shown the applicability of either subsection 552.108(a)(1) or 552.108(b)(1). Thus, you may not withhold the information under subsection 552.108(a)(1) or 552.108(b)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Open Records Division
Office of the Attorney General

Ref.: ID# 126383

Encl.: Submitted documents

cc: Ms. Petra Zarate
2220 S. 30½ Street
McAllen, Texas 78501
(w/o enclosures)